

1.1 A bill for an act

1.2 relating to public safety; authorizing stays of adjudication in certain criminal
1.3 cases involving consensual sexual relationships with an underaged victim;
1.4 providing that offenders who receive these stays do not have to register as
1.5 predatory offenders; classifying data; requiring existing sex education programs
1.6 to address criminal sexual conduct laws; amending Minnesota Statutes 2008,
1.7 sections 13.871, subdivision 3; 121A.23, subdivision 1; 243.166, by adding
1.8 a subdivision; 609.095; proposing coding for new law in Minnesota Statutes,
1.9 chapter 609.

1.10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.11 Section 1. Minnesota Statutes 2008, section 13.871, subdivision 3, is amended to read:

1.12 Subd. 3. **Criminal code.** (a) **Sources of presentence investigation reports.**

1.13 Disclosure of confidential sources in presentence investigation reports is governed by
1.14 section 609.115, subdivision 4.

1.15 (b) **Domestic abuse investigation report.** Data contained in domestic abuse
1.16 investigation reports are classified under section 609.2244.

1.17 (c) **Use of motor vehicle to patronize prostitutes.** Use of a motor vehicle in the
1.18 commission of an offense under section 609.324 is noted on the offender's driving records
1.19 and the notation is classified pursuant to section 609.324, subdivision 5.

1.20 (d) **Sexual conduct offenses.** Access to data relating to dismissal of certain
1.21 sexual conduct offenses involving consensual conduct is governed by section 609.3454,
1.22 subdivision 5.

1.23 (e) **Sex offender assessment.** Assessor access to data relevant to sex offender
1.24 assessments is governed under section 609.3457.

1.25 (f) **Sexual assault crime victims.** Data on sexual assault victims are governed
1.26 by section 609.3471.

2.1 ~~(f)~~ (g) **Data for assessment of offenders.** Access to data for the purpose of a mental
2.2 health assessment of a convicted harassment offender is governed by section 609.749,
2.3 subdivision 6.

2.4 **EFFECTIVE DATE.** This section is effective July 1, 2009.

2.5 Sec. 2. Minnesota Statutes 2008, section 121A.23, subdivision 1, is amended to read:

2.6 Subdivision 1. **Sexually transmitted infections and diseases program.** The
2.7 commissioner of education, in consultation with the commissioner of health, shall assist
2.8 districts in developing and implementing a program to prevent and reduce the risk of
2.9 sexually transmitted infections and diseases, including but not exclusive to human
2.10 immune deficiency virus and human papilloma virus. Each district must have a program
2.11 that includes at least:

2.12 (1) planning materials, guidelines, and other technically accurate and updated
2.13 information;

2.14 (2) a comprehensive, technically accurate, and updated curriculum that includes
2.15 helping students to abstain from sexual activity until marriage and information on criminal
2.16 sexual conduct laws, specifically those based on the ages of the parties;

2.17 (3) cooperation and coordination among districts and SCs;

2.18 (4) a targeting of adolescents, especially those who may be at high risk of contracting
2.19 sexually transmitted infections and diseases, for prevention efforts;

2.20 (5) involvement of parents and other community members;

2.21 (6) in-service training for appropriate district staff and school board members;

2.22 (7) collaboration with state agencies and organizations having a sexually transmitted
2.23 infection and disease prevention or sexually transmitted infection and disease risk
2.24 reduction program;

2.25 (8) collaboration with local community health services, agencies and organizations
2.26 having a sexually transmitted infection and disease prevention or sexually transmitted
2.27 infection and disease risk reduction program; and

2.28 (9) participation by state and local student organizations.

2.29 The department may provide assistance at a neutral site to a nonpublic school
2.30 participating in a district's program. District programs must not conflict with the health
2.31 and wellness curriculum developed under Laws 1987, chapter 398, article 5, section 2,
2.32 subdivision 7.

2.33 If a district fails to develop and implement a program to prevent and reduce the
2.34 risk of sexually transmitted infection and disease, the department must assist the service
2.35 cooperative in the region serving that district to develop or implement the program.

3.1 EFFECTIVE DATE. This section is effective July 1, 2009.

3.2 Sec. 3. Minnesota Statutes 2008, section 243.166, is amended by adding a subdivision
3.3 to read:

3.4 Subd. 1c. Exception to registration requirement. Notwithstanding the provisions
3.5 of subdivision 1b, a person who is sentenced under section 609.3454 for a violation of
3.6 section 609.344, subdivision 1, clause (b), is not required to register under this section. If
3.7 the court enters an adjudication of guilt for the person under section 609.3454, subdivision
3.8 3, then the person must register under this section.

3.9 EFFECTIVE DATE. This section is effective the day following final enactment
3.10 and applies to crimes committed on or after that date.

3.11 Sec. 4. Minnesota Statutes 2008, section 609.095, is amended to read:

3.12 **609.095 LIMITS OF SENTENCES.**

3.13 (a) The legislature has the exclusive authority to define crimes and offenses and the
3.14 range of the sentences or punishments for their violation. No other or different sentence
3.15 or punishment shall be imposed for the commission of a crime than is authorized by this
3.16 chapter or other applicable law.

3.17 (b) Except as provided in section 152.18 ~~or 609.375~~, 609.3454, or 609.3751, or upon
3.18 agreement of the parties, a court may not refuse to adjudicate the guilt of a defendant who
3.19 tenders a guilty plea in accordance with Minnesota Rules of Criminal Procedure, rule 15,
3.20 or who has been found guilty by a court or jury following a trial.

3.21 (c) Paragraph (b) does not supersede Minnesota Rules of Criminal Procedure, rule
3.22 26.04.

3.23 EFFECTIVE DATE. This section is effective the day following final enactment
3.24 and applies to crimes committed on or after that date.

3.25 Sec. 5. **[609.3454] DISCHARGE AND DISMISSAL AUTHORIZED FOR**
3.26 **CERTAIN THIRD-DEGREE CRIMINAL SEXUAL CONDUCT OFFENSES**
3.27 **INVOLVING CONSENSUAL CONDUCT.**

3.28 Subdivision 1. Applicability. (a) A person is eligible for a discharge and dismissal
3.29 under this section if the person:

3.30 (1) has not been previously convicted of or adjudicated delinquent for a violation of
3.31 section 609.342, 609.343, 609.344, 609.345, 609.3451, 609.3453, or 617.23 or any similar
3.32 statute of the United States, this state, or any state;

4.1 (2) has not previously participated in or completed a diversion program relating to
4.2 a charge of violating an offense listed in clause (1); and

4.3 (3) has not previously been placed on probation without a judgment of guilty for an
4.4 offense listed in clause (1).

4.5 (b) A court may act pursuant to subdivision 2 only if the court determines on the
4.6 record that:

4.7 (1) the offender is no more than 60 months older than the complainant;

4.8 (2) the conduct between the offender and the complainant that was the basis for the
4.9 charge was, except for the ages of the parties, consensual;

4.10 (3) the offender does not pose a threat to the complainant or the public;

4.11 (4) the actions of the offender were not predatory; and

4.12 (5) doing so is in the interest of justice.

4.13 (c) When determining whether to proceed under subdivision 2, the court may
4.14 consider such factors as the nature and length of the relationship between the parties, the
4.15 views of the complainant, the views of the complainant's and offender's family members,
4.16 the views of community members, and the cultural traditions of the parties.

4.17 Subd. 2. **Procedure.** For a person eligible under subdivision 1 who is charged with
4.18 violating section 609.344, subdivision 1, clause (b), the court may after trial or upon a plea
4.19 of guilty, without entering a judgment of guilty and with the consent of the person, defer
4.20 further proceedings and place the person on probation upon such reasonable conditions
4.21 as it may require and for a period not to exceed the maximum sentence provided for
4.22 the violation.

4.23 Subd. 3. **Violation.** Upon violation of a condition of the probation, the court may
4.24 enter an adjudication of guilt and proceed as otherwise provided in law.

4.25 Subd. 4. **Early dismissal.** The court may, in its discretion, dismiss the proceedings
4.26 against the person and discharge the person from probation before the expiration of the
4.27 maximum period prescribed for the person's probation.

4.28 Subd. 5. **Dismissal; record.** (a) For purposes of this subdivision, "not public" has
4.29 the meaning given in section 13.02, subdivision 8a.

4.30 (b) If during the period of probation the person does not violate any of the conditions
4.31 of the probation, then upon expiration of the period the court shall discharge the person
4.32 and dismiss the proceedings against that person. Discharge and dismissal under this
4.33 subdivision shall be without court adjudication of guilt, but a not public record of it shall
4.34 be retained by the Bureau of Criminal Apprehension for the purpose of use by the courts
4.35 in determining the merits of subsequent proceedings against the person. The not public
4.36 record may also be opened only upon court order for purposes of a criminal investigation,

5.1 prosecution, or sentencing. Upon request by law enforcement, prosecution, or corrections
5.2 authorities, the bureau shall notify the requesting party of the existence of the not public
5.3 record and the right to seek a court order to open it pursuant to this section. The court shall
5.4 forward a record of any discharge and dismissal under this section to the bureau which
5.5 shall make and maintain the not public record of it as provided under this section. The
5.6 discharge or dismissal shall not be deemed a conviction for purposes of disqualifications
5.7 or disabilities imposed by law upon conviction of a crime or for any other purpose.

5.8 Subd. 6. **Retroactivity.** (a) A person who was convicted or adjudicated delinquent
5.9 before the effective date of this section for a violation of section 609.344, subdivision 1,
5.10 clause (b), upon notice to all interested parties may bring a motion before the sentencing
5.11 court for a disposition under this section. If the court determines that the person is
5.12 otherwise eligible for the disposition, the court may vacate the original adjudication of
5.13 guilt and proceed as provided in this section.

5.14 (b) Notwithstanding any contrary provision in section 609A.02, a person receiving a
5.15 discharge and dismissal under this subdivision may petition the court under chapter 609A
5.16 for an expungement of records relating to the original proceeding.

5.17 Subd. 7. **Outright dismissal of charge.** Upon recommendation from a
5.18 court-ordered sex offender assessment, a court may dismiss a charge against a person
5.19 for violating section 609.344, subdivision 1, clause (b), if the person is eligible under
5.20 subdivision 1 for a discharge and dismissal. The assessment must have made the
5.21 determinations required under subdivision 1, paragraph (b), and considered the factors
5.22 listed under subdivision 1, paragraph (c). Subdivisions 2 to 6 do not apply to a dismissal
5.23 under this subdivision. The authority of the court to dismiss a case under this subdivision
5.24 is in addition to the court's general authority to dismiss criminal cases under other law.

5.25 **EFFECTIVE DATE.** This section is effective the day following final enactment
5.26 and applies to crimes committed on or after that date.